

SUPREME COURT DECISION

(Continued from Page One)

the light caused by the fire in the tie house. They went to the enclosure and eluded down in it, finding the man whom they afterwards killed, lying down on some ties. They first sat down upon a tie, and then asked the man to go and get them some whiskey. Johnny gave him half a dollar and the man said, "I can't go up there; I got one leg." What happened next the witness said he did not remember because he was too drunk. He then testified that the man put the money in his pocket, and Johnny asked him to give it back. He did not know whether he gave the money back, but Johnny said to him, "Let's go and kill that man." Johnny then gave him a knife, and held the man's hands crossways by the wrists. Johnny then went and got the man by his coat. The man tried to raise up, and Johnny put his knee on his breast, holding his knife in his right hand. Johnny then said "Go ahead and cut him." He held his coat with his left hand and with the right hand he put the knife against his throat, and Johnny says, "Cut him hard." Then he killed him. After they had killed him Johnny looked into the man's pockets. Johnny then cut off the man's shoe, saying, "There is money in shoe sometimes." Then they both said, "Let's put him on top of fire." Johnny said, "Let's put on lots of ties and burn him up." They put the body on the fire and put the ties on it also. They then left, Johnny taking with him the dead man's overcoat, and went to the camp of Johnny's father. Upon arriving there Johnny asked for something to eat, and Johnny told that they had killed a man.

The testimony of Johnny, who is a Shoshone Indian, varies from that of the witness in that he testified he did not know much about what happened, that he was too drunk to remember. He testified that he remembered holding the murdered man's hands, and holding to place him on the fire, but further than that he had no recollection of the occurrence whatever. The condition in which the body of the deceased was found the morning following the murder, as described by one of the witnesses for the state as follows: "The body had been cut from car to car. The left eye had been slashed out. There was a deep wound in the left cheek. The left arm had been broken so the bone protruded through the clothing. There were bruises on the body. The clothing had been torn from the body. Blood stains were visible all around, and a pool of blood was in the south corner of the little tie-house in which the body lay. The body had been thrown on a coal fire, and was burning at the time. The imprint of a bloody hand, clearly defined, was visible on the tie lying just west of the tie house. Several ties had been thrown into the tie-house near the fire, and one or two ties into the fire. I saw two knives, one lying on the pile of ties where the imprint of the hand was outside, and the other in the tie-house between the man's leg and a tie. The man's shoe was near his foot; it had been cut from the foot to the sole; there were bloody stains on and in the shoe. The pockets of the coat and trousers had been turned inside out; part of the clothing was burned, and the pockets had been torn away and thrown into the fire and on the ground in the tie house."

It would seem, from the record, that there was some manifestation upon the part of each of the defendants to seek to gain some advantage at the expense of the other, although both relied upon drunkenness in mitigation of the offense.

According to their testimony, they had consumed during the day several bottles of Jamaica ginger, which contained, according to the testimony, about seventy per cent of alcohol, and a pint flask of whiskey.

Charles Brown, a witness on behalf of the defendants, testified that he saw them at Montello the afternoon and evening preceding the murder. He saw them first about two o'clock, when they seemed to be under the influence of liquor, drunk enough to be boisterous. He saw them again between four and five o'clock, coming in front of a saloon, and they were talking quite loud, and were drunk. He, in company with a man named Richard Cromley saw them again that night between eleven and twelve o'clock. They were quite drunk then, trying to help each other along. They were talking very loud and boisterous.

many of the names so selected were suggested, designated and recommended by the said Dawley.

The Court heard the testimony of several witnesses relative to the manner of selecting the trial jurors for the County for the year in question, and then made his finding and delivered his decision on the motion as follows:

"From the testimony produced here on the hearing of the challenge, the Court finds that all of the persons whose names were put on the jury list were selected by the Board of County Commissioners; that none of them were selected by Mr. Dawley as alleged in the challenge and also find that it is not true that selections were not made from old jury lists, although a jury list had been used by the Commissioners for the purpose of finding out the names, it would have been perfectly proper. The book used was a book showing jury service and it was proper for the commissioners to consult that book. I do not find that although Mr. Dawley in certain cases said that certain men would be good jurymen; I do not find that in any case the Commissioners failed to exercise their own judgment in making up the list. There has been no injury shown to the defendants. For these reasons there has been no material departure from the forms prescribed by the statute. The challenge is disallowed."

We have carefully reviewed the transcript of the evidence in the record upon the motion, and think the same fully supports the findings and conclusions of the trial court.

Mr. Dawley was the clerk of the court, as well as the clerk of the Board of County Commissioners. He had kept a record of jury service which covered a period of nearly ten years. Although he could not legally select nor properly urge the selection of any juror, we see no objection to the Board of County Commissioners taking advantage of information in the possession of their clerk, so long as they exercise their own judgment in conformity with the statute, and we think the evidence shows they did in this case. If any of the men whom Mr. Dawley said would be good jurors were put on the general list of two hundred and fifty for the year by the commission, before or after he had so stated, it was not shown that any of them were among the twelve who tried the defendants, or were on the jury list from the box and the court at the time of the trial.

It is contended that the indictment is defective, and that the court should have sustained defendants' motion.

(Continued on Page 4.)

J. K. Firth, Jr. and wife, are among the Hotel Arlington guests, arriving this morning from San Francisco.

Miss Donny, private secretary and stenographer to T. B. Rickey, returned this morning from a business visit in Reno.

The Royal Hawaiian Band which was to have appeared at the opera house Friday or Saturday evening must have been lost in the shuffle somewhere as Manager Meder has had no word from the management regarding it.

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